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5 UNITED STATES DISTRICT COURT
6 EASTERN DISTRICT OF WASHINGTON

7 DISABILITY RIGHTS WASHINGTON,

No. CV-09-024-JLQ

8 Plaintiff,

9 vs.

10 PENRITH FARMS, JAMES BREWSTER,
SHERRY BREWSTER, and STEVEN A.
11 CARRERAS,

12 Defendants.

MEMORANDUM OF LAW IN
SUPPORT OF PLAINTIFF'S
MOTION FOR SUMMARY
JUDGMENT

13 **I. INTRODUCTION**

14 Plaintiff, Disability Rights Washington, seeks summary judgment pursuant
15 to Fed. R. Civ. P. 56(c). As the designated Protection and Advocacy system for
16 Washington State, Disability Rights Washington has a federal mandate to protect
17 and advocate for persons with disabilities. Defendants refuse to acknowledge this
18 statutory mandate that Disability Rights Washington provide protection and
19 advocacy services to persons with disabilities. DRW is required to investigate
20

1 allegations of abuse and neglect and advocate to protect the rights of individuals
2 with disabilities.

3 Defendants' refusal to abide by the requirements of the Developmental
4 Disabilities Assistance and Bill of Rights Act, 42 U.S.C. § 15041, *et seq.*, the
5 Protection and Advocacy for Individuals With Mental Illness Act, 42 U.S.C. §
6 10801, *et seq.*, and the Protection and Advocacy for Individual Rights Act 29
7 U.S.C. § 794e, and the regulations promulgated pursuant to the above referenced
8 Acts irreparably harms Plaintiff's ability to fulfill its federal mandate to protect and
9 advocate for the rights of people with disabilities in the State of Washington.

10 **II. FACTS**

11 See Statement of Specific Facts in Support of Plaintiff's Motion for
12 Summary Judgment.

13 **III. ARGUMENT**

14 **A. The Plaintiff meets the Requirements for Summary** 15 **Judgment**

16 Under Fed. R. Civ. P. 56(c), a party is entitled to summary judgment where
17 there is no genuine issue giving rise to a dispute as to material facts and where the
18 party is entitled to judgment as a matter of law. *See, e.g. Toscano v. Prof'l. Golf's*
19 *Ass'n*, 258 F.3d 978, 982 (9th Cir. 2001). "Material Facts" are facts which, under
20 applicable law, may affect the outcome of the case. *Anderson v. Liberty Lobby*,
477 U.S. 242, 248 (1986). A "genuine issue" exists only when the nonmoving

1 party produces probative evidence in support of its claims on which a trier of fact
2 could reasonably find in the nonmoving party's favor. *Id.* at 248-49; *see also*
3 *Nishimoto v. Federman-Bachrach & Assoc.*, 93 F.2d 709, 716 (9th Cir. 1990). No
4 genuine issue of fact exists where the record, taken as a whole, could not lead a
5 rational trier of fact to find for the nonmoving party. *Matsushita Elec. Indust. Co.*
6 *Ltd. Et al. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986) (citations omitted).
7 The nonmoving party must offer significantly probative evidence to show a
8 genuine issue of material fact, and may not rely upon conclusory allegations of
9 evidence which are merely colorable. *See Anderson*, 477 U.S. 249-50; *Lujan v.*
10 *Nat'l Wildlife Fed'n*, 497 U.S. 888-89 (1990).

11 There is no dispute that Disability Rights Washington is the Protection and
12 Advocacy System for the state of Washington (Statement of Specific Facts ¶ 1);
13 that Disability Rights Washington received complaints alleging abuse or neglect
14 (Statement of Specific Facts ¶¶ 2-5, 10-12); that Disability Rights Washington
15 determined it had probable cause to suspect possible abuse or neglect of an
16 individual with a disability (Statement of Specific Facts ¶ 6); or that Penrith Farms
17 refuses to allow Disability Rights Washington access to conduct a full
18 investigation and monitoring of its facility (Statement of Specific Facts ¶¶ 6, 9-11,
19 14). The only fact which Defendants have previously disputed is whether people
20 with disabilities are served at Penrith Farms.

1 Time and again, Disability Rights Washington has presented evidence
2 showing Penrith Farms serves people with disabilities. Order Denying Defendants
3 Motion to Dismiss, Ct. Rec. 45, p. 4; *see, e.g.* Statement of Specific Facts ¶¶ 3, 19-
4 23, 27-29 (citing Ct. Rec's. 5, 14, 34); *see also* Statement of Specific Facts ¶¶ 30-
5 36 (citing Declaration of Cooper Pura in Support of Plaintiff's Response to Order
6 to Show Cause; Declaration of Awmiller in Support of Plaintiff's Response to
7 Show Cause). Defendants' mere denial of the presence of people with disabilities
8 without offering significant probative evidence supporting these assertions is not
9 sufficient to raise a genuine issue of material fact. *See Anderson*, 477 U.S. 249-50;
10 *Lujan v. Nat'l Wildlife Fed'n*, 497 U.S. 888-89 (1990). Having provided unrefuted
11 evidence satisfying the elements for initiating an investigation into possible abuse
12 and neglect of individuals with mental illness or disability, Disability Rights
13 Washington is entitled to declaratory and permanent injunctive relief as a matter of
14 law. Therefore, Plaintiff meets summary judgment requirements.

15 **B. Disability Rights Washington Meets the Requirements for**
16 **Initiating an Investigation and is Entitled to Judgment as a**
Matter of Law.

17 As the federally mandated Protection and Advocacy System in the State of
18 Washington, Disability Rights Washington has a right to access records and other
19 information necessary to conduct a full investigation of possible abuse and neglect
20 of people with mental illness or disabilities. 42 U.S.C. § 15043 (a)(2)(A)(ii) and

1 (a)(2)(J)(i); 42 U.S.C. § 10805 (a)(1)(A) and (a)(3-4); 794e (f)(2); 42 C.F.R. §
2 51.2; 45 C.F.R. § 1386.19. The federal mandate requires these protection and
3 advocacy services be provided when Disability Rights Washington receives a
4 complaint or has probable cause to suspect abuse and neglect of an individual with
5 a significant mental illness, emotional impairment, developmental disability, or
6 other disability. *Id.* DRW presented unrefuted evidence that there are people with
7 disabilities served by Penrith Farms, and that it received complaints and has
8 probable cause to suspect possible abuse or neglect. Therefore, Disability Rights
9 Washington is entitled to judgment as a matter of law.

10 **i. Penrith Farms Serves People with Mental Illness and**
11 **Disabilities**

12 Federal law requires Disability Rights Washington provide protection and
13 advocacy services to people with all types of disabilities. *Id.* In order to fulfill that
14 mandate, protection and advocacy systems are authorized to gain access to
15 locations that have a history of serving people with disabilities and where there
16 *may* currently be people with disabilities served. *Protection & Advocacy For*
17 *Persons With Disabilities v. Armstrong*, 266 F. Supp.2d 303, 314 (D. Conn. 2003).

18 As a number of courts that have considered this issue have concluded,
19 “evidence that a facility has previously housed individuals who are
20 mentally ill, as well as evidence that some current residents *may* be
mentally ill is sufficient under PAIMI to merit access by [P & As].”
Hall, No. 3:01cv-538-H, slip. op. at 3 (citing *Michigan Prot. &*
Advocacy Serv., Inc. v. Miller, 849 F. Supp. 1202, 1207 (W.D. Mich.
1994) (concerning training schools, detention facilities and foster care

homes)).

Id. (emphasis added)

The Court previously found that there is “sufficient evidence that some residents *may* be mentally ill.” Order Denying Defendants Motion to Dismiss (Ct. Rec. 45 p. 4) (emphasis in original); see, also Statement of Specific Facts ¶¶ 3, 19-23, 27-29 (citing Ct. Rec’s. 5, 14, 34). Disability Rights Washington has presented evidence from a board certified psychiatrist and neurologist stating that a previous resident, J.S., has significant mental disorders, including bipolar disorder and personality changes based on head trauma. Statement of Specific Facts ¶ 31(citing Ct. Rec. 34). Despite this evidence of J.S.’s significant and numerous disabilities Defendants do not concede that J.S. has significant disabilities.

Defendants’ also claim that although they serve many people who have behaviors that could be symptoms of mental illness, emotional impairment, or other disability, Defendant’s do not believe any of their residents have disabilities. Statement of Specific Facts ¶ 26 (citing Ct. Rec. 29). *See also* ¶ 25 (citing Ct. Rec. 20, 27). Defendants’ unsupported descriptions of their current clients are insufficient to outweigh their previous admissions in their declarations and advertising materials. Statement of Specific Facts ¶¶ 19-23, 27-29 (citing Ct. Rec’s. 5, 14). It is clear from their advertising materials that Defendants seek customers by promising to provide counseling under the direction of their clinical

1 director, and a variety of therapies “countless times a day” to people with mental
2 illnesses and disabilities like Depression, other mood disorders, Anxiety, and
3 Attention Deficit Hyperactivity Disorder. Statement of Specific Facts ¶¶ 19-21,
4 27, 31 (Ct. Rec. 5). The therapy offered includes not only group, individual, and
5 family therapy, but also Dialectic Behavioral Therapy (DBT) which “is a well-
6 established treatment for individuals with multiple and sever psychosocial
7 disorders, including those who are chronically suicidal,” and Eye Movement
8 Desensitization Reprocessing which is a treatment recognized by the American
9 Psychiatric Association for patients with acute stress disorders and posttraumatic
10 stress disorder. Statement of Specific Facts ¶ 21 (Ct. Rec. 5); Linda Dimeff and
11 Marsha Linehan, *Dialectical Behavior Therapy for Substance Abusers, Science*
12 *and Practice in Action*, p. 39-47 (2008), a true and correct copy of which is
13 attached to Declaration of Carlson in Support of Motion for Summary Judgment as
14 Exhibit A; American Psychiatric Association, *Practice Guideline for the Treatment*
15 *of Patients With Acute Stress Disorder and Posttraumatic Stress Disorder*, p. 32
16 (2004), a true and correct copy of which is attached to Declaration of Carlson in
17 Support of Motion for Summary Judgment as Exhibit B. Disability Rights
18 Washington has offered several additional admissions made on the Defendants’
19 website which show that by the very design of their business they serve and likely
20

1 will continue to serve some people with mental illness and disabilities in their
2 facility. Statement of Specific Facts ¶¶ 19-21, 27 (citing Ct. Rec. 5).

3 The Court provided Disability Rights Washington an opportunity to
4 interview additional residents to discern whether there are, in fact, additional
5 people with disabilities served by Penrith Farms. Order Denying Defendant's
6 Motion to Dismiss, p. 5 (Ct. Rec. 45). During Disability Rights Washington's visit
7 to Penrith Farms, several Penrith residents self identified as being people with
8 disabilities, including individuals with Bi-Polar Disorder, Epilepsy, a Learning
9 Disability qualifying the youth for special education services in high school,
10 Obsessive Compulsive Disorder, and Depression. Statement of Specific Facts ¶¶
11 32-35 (citing Declaration of Awmiller in Support of Plaintiff's Order to Show
12 Cause ¶ 9; and Declaration of Cooper Pura in Support of Plaintiff's Order to Show
13 Cause ¶¶ 8, 9, 13, 14).

14 Penrith Farms' clinical staff also made statements against interest
15 confirming that Penrith Farms does, in fact, serve people with disabilities. John
16 Brewster, who was previously a mental health therapist with a local Medicaid
17 funded mental health provider and special education counselor, currently maintains
18 a case load of five youth at Penrith and identified one current resident as a person
19 with "major mental illness." Statement of Specific Facts ¶ 36 (citing Declaration
20 of Awmiller in Support of Plaintiff's Order to Show Cause ¶ 11; and Declaration

1 of Cooper Pura in Support of Plaintiff's Order to Show Cause ¶ 10). Another
2 clinical staff, Gina, introduced herself as Penrith Farms' nurse and indicated that
3 Penrith served "youth with autism and borderline schizophrenia." Statement of
4 Specific Facts ¶ 30 (citing Declaration of Cooper Pura in Support of Plaintiff's
5 Response to Order to Show Cause ¶ 11).

6 Defendants own statements provide substantial evidence that Penrith Farms
7 fits the *Armstrong* test which states the Protection and Advocacy Act applies where
8 a facility has served individuals with mental illness in the past and *may* currently
9 serve individuals with mental illness. Here, Penrith has served people with
10 disabilities in the past, and continues to serve people with disabilities. Order
11 Denying Motion to Dismiss (Ct. Rec. 45, p. 4); Statement of Facts ¶¶ 3, 19-23, 27,
12 36 (citing Ct. Recs. 5, 34; Declaration of Cooper Pura in Support of Response to
13 Show Cause; and Declaration of Awmiller in Support of Plaintiff's Order to Show
14 Cause). Disability Rights Washington has presented ample evidence that
15 Defendants have served, and may currently serve, people with disabilities as
16 defined by one or more of the Protection and Advocacy Acts. Therefore,
17 Disability Rights Washington has authority under federal law to conduct a full
18 investigation under 42 C.F.R. § 51.2; 45 C.F.R. § 1386.19.

19 Merely disagreeing with Plaintiff's evidence and the legal conclusions which
20 flow from them is insufficient to sustain a defense to a motion for summary

1 judgment. To prove the existence of a genuine issue of material fact, the
2 nonmoving party must offer significantly probative evidence, and may not rely
3 upon conclusory allegations of evidence which are at best merely colorable. *See*
4 *Anderson*, 477 U.S. 249-50; *Lujan v. Nat’l Wildlife Fed’n*, 497 U.S. 888-89 (1990).

5 Despite several opportunities, Defendants have failed to submit significant
6 probative evidence to refute the claim that people with disabilities and mental
7 illness have been, and may currently be served at Penrith Farms. At the initial
8 prehearing conference, the Court ordered the defendants to present such evidence
9 *in camera*. Order on Status Conference (Ct. Rec. 20, ¶ 20); Statement of Specific
10 Facts ¶ 25 (citing Ct. Rec. 20, 29). Defendants instead offered their own
11 conclusory statements alleging their residents’ lack disabilities as defined by the
12 Protection and Advocacy Acts. Statement of Specific Facts ¶ 26 (citing Ct. Rec.
13 29). Defendants fell short of showing they do not serve people with disabilities,
14 and offered only that they do not choose to consider the individuals they serve as
15 having disabilities, or at least as being disabled enough to warrant DRW’s
16 intervention. Statement of Facts ¶¶ 24, 26 (citing Ct. Rec. 14, 29). These
17 conclusions do not rise to the level of establishing a “material fact.”

18 Therefore, in light of the previous factual findings of this Court, additional
19 evidence gathered during Disability Rights Washington’s visit to Penrith Farms,
20 and the lack of any significant probative evidence to the contrary, there is no

1 genuine issue of material fact around the issue of whether there are people with
2 mental illness or disabilities are served by Penrith Farms.

3 **ii. Disability Rights Washington Received Complaints and it**
4 **Determined it Has Probable Cause to Suspect Possible Abuse**
5 **and Neglect**

6 The Protection and Advocacy Acts mandate that designated Protection and
7 Advocacy Systems, including Disability Rights Washington, be allowed access to
8 individuals and records in order to investigate complaints of abuse and neglect
9 which it receives. Abuse and neglect in this context have specific statutory and
10 regulator definitions which are independent from other State regulatory or criminal
11 definitions. Neglect, for example, "...includes an act or omission such as the
12 failure to establish or carry out an appropriate individual program plan or treatment
13 plan for an individual with mental illness...." 42 U.S.C. 10802(5). Disability
14 Rights Washington has received information that individuals who have been
15 prescribed psychiatric medications are routinely taken off of them when they arrive
16 at Penrith Farms. Such an action by a facility which does not recognize major
17 mental illness is of great concern and warrants an investigation of neglect by the
18 Protection and Advocacy System.

19 Moreover, violations of an individual's legal rights can rise to the level of
20 "abuse," triggering the Protection and Advocacy Acts' investigatory authority. The

1 interpretive guidance provided during the regulation promulgation process
2 pursuant to the Protection and Advocacy of the Mentally Ill Act found:

3 The Department believes that when an individual's rights as defined
4 in the Bill of Rights for Persons with Mental Illness established by the
5 President's Commission on Mental Health (Title II of the Act) are
6 repeatedly and/or egregiously violated, this constitutes abuse. While
7 the Bill of Rights provides useful guidance, it should not be
8 considered full or limiting as to types of rights violations. It is not
9 necessarily true, however, that every violation of a person's rights is in
10 and of itself "abuse" as defined in the Act. The Department declines
11 the opportunity, however, of defining the threshold at which a
12 violation of an individual's rights constitutes abuse, leaving that
13 decision to the systems which will have intimate knowledge of the
14 situation based on its monitoring of facilities and its discussion with
15 individuals with mental illness.

16 62 FR 53548, 53551.

17 Significantly, this interpretive guidance, noting that an egregious rights violation
18 may amount to "abuse," defers to the judgment of Protection and Advocacy system
19 as to whether a particular violation might amount to an abusive practice – similar
20 to the cases concerning the determination of "probable cause" to suspect abuse or
neglect as was described by *Arizona Center for Disability Law v. Allen*, 197 F.R.D.
689 (D. Az. 2000); and *Maryland Disability Law Center, Inc. v. Mount*
Washington Pediatric Hospital, Inc., 664 A.2d16 (Md. Ct. of Spec. Apps. 1995).

 The allegations and mounting evidence suggest that Penrith Farms may be
routinely systematically violating the rights of the adults they serve. Without a full
investigation it would not be fair to any of the parties involved to come to

1 conclusions as to whether abuse or neglect were actually being committed at
2 Penrith Farms. For the sake of initiating an investigation it should be noted,
3 however, that if the allegations were found to be true they would constitute
4 egregious violations of rights and thus “abuse” as defined by the Protection and
5 Advocacy Acts.

6 Residents of Penrith Farms and Defendants themselves agree that Penrith
7 Farms places blanket restrictions on communication with the outside world beyond
8 three weekly calls to approved family members. Statement of Specific Facts ¶ 8,
9 39, (citing Ct. Rec. 5, 29). This blatant practice of restriction would amount to a
10 pervasive and egregious action to take against adults who retain their rights to
11 contact whomever they chose. This practice would strip voluntary residents of
12 civil rights that even persons who are involuntarily committed to locked facilities
13 enjoy. WASH. ADMIN. CODE § 388-865-0561(8) (2009) (Noting right to free
14 access to confidential phone calls) true and correct copy is attached to Declaration
15 of Carlson in Support of Plaintiff’s Motion for Summary Judgment as Exhibit C.

16 Moreover, the location of the facility on an isolated rural wooded farm also
17 makes it difficult, if not impossible, to reasonably expect individuals with
18 disabilities and mental illness will be able to leave if they so choose. Statement of
19 Specific Facts ¶ 40 (citing Ct. Rec. 5). This is particularly true where residents are
20 compelled to give up identification, money, and cell phones upon admission and

1 not allowed to call for assistance. *Id.* Such were the allegations originally made to
2 Disability Rights Washington. These allegations have not only been corroborated,
3 but Penrith Staff have admitted that they provide the sole transportation for
4 residents to and from town and they would not provide such transportation to an
5 individual who decides he or she would like to leave the program against the
6 wishes of staff. Statement of Specific Facts ¶ 8 (citing Declaration of Cooper Pura
7 in Support of Response to Show Cause ¶ 20). Given the isolated nature of their
8 unlicensed program and the loss of liberty experienced by the residents, the
9 importance of monitoring by the protection and advocacy system is greatly
10 enhanced.

11 Beyond authorizing investigations of complaints, the statutes also authorize
12 investigation of incidents of possible abuse and neglect which are supported by
13 probable cause. Probable cause is a reasonable ground for belief that an individual
14 with a developmental disability or mental illness has been, or may be, subject to
15 abuse or neglect. 45 C.F.R. § 1386.19; 42 C.F.R. 51.2. The Protection and
16 Advocacy staff charged with making such determination may base the decision on
17 reasonable inferences drawn from his or her experience or training regarding
18 similar incidents, conditions or problems that are usually associated with abuse or
19 neglect. *Id.* Furthermore, courts have held that the Protection and Advocacy
20 System is “the final arbiter of probable cause for the purpose of triggering its

1 authority to access all records for an individual that may have been subject to
2 abuse or neglect.” *Arizona Center for Disability Law v. Allen*, 197 F.R.D. 689, 695
3 (D. Az. 2000).

4 The complaint and probable cause standards constitute two different legal
5 standards, either one of which is sufficient to invoke the investigatory authority of
6 the Protection and Advocacy Acts. Disability Rights Washington received a
7 complaint in October 2008 alleging an individual with mental illness was not
8 receiving appropriate treatment. Statement of Specific Facts ¶¶ 2, 3 (citing Ct. Rec.
9 5). Disability Rights Washington also received complaints from a resident, J.S., on
10 October 20, 2008. Statement of Specific Facts ¶ 4 (citing Ct. Rec. 5). J.S. alleged
11 that he felt uncomfortable upon arriving at Penrith and requested to leave but was
12 told he could not. J.S. reported that he had to turn over his driver’s license, phone,
13 and other possessions to Penrith staff. Statement of Specific Facts ¶¶ 4, 5, 10, 11,
14 12 (citing Ct. Rec. 5).

15 Additionally, Disability Rights Washington determined it had probable
16 cause to suspect possible abuse and neglect due to the printed and oral information
17 gathered in phone and in person from residents and staff of Penrith Farms. As
18 discussed above, there is ample support for the possibility that residents may be
19 subject to significant ongoing rights violations which would constitute abuse as
20 defined by the Protection and Advocacy Acts. Statement of Specific Facts ¶ 9

1 (citing Ct. Rec. 3). Disability Rights Washington received additional information
2 during its visit to Penrith Farms on April 6, 2009 that corroborated some of these
3 complaints. *See* Statement of Specific Facts ¶¶ 37-38, 40 (citing Decl. of Cooper
4 Pura in Support of Response to Show Cause and Declaration of Awmiller in
5 Support of Response to Show Cause.

6 Here, there is no genuine issue contesting the fact that Disability Rights
7 Washington received complaints or that it made a determination that it had
8 probable cause to suspect possible abuse or neglect.

9 **iii. Disability Rights Washington is entitled to Declaratory and**
10 **Permanent Injunctive Relief as a Matter of Law**

11 There is no genuine issue of material fact regarding Disability Rights
12 Washington's satisfaction of the requirements for initiating an investigation of
13 possible abuse and neglect supported by a complaint and probable cause. 45
14 C.F.R. § 1386.19; 42 C.F.R. 51.2.

15 In determining whether to grant summary judgment, the court uses the same
16 test it applies under FED. R. CIV. P. 50 governing judgment as a matter of law.

17 *Reeves v. Sanderson Plumbing Prod., Inc.*, 530 U.S. 133, 150-51(2000).

18 Specifically, summary judgment should be granted when "a party has been fully
19 heard on an issue and there is no legally sufficient evidentiary basis for a
20 reasonable jury to find for that party on that issue." *Id.* Citing FED. R. CIV. P.

50(a); and *Weisgram v. Marley Co.*, 528 U.S. 440, 447-448 (2000). Defendants

1 have not provided sufficient evidence to show they do not serve people with
2 disabilities. Therefore, the court is able to issue a ruling in favor of Disability
3 Rights Washington.

4 To that end, it is within the Court's discretion to "declare the rights and other
5 legal relations of any interested party seeking such declaration, whether or not
6 further relief is or could be sought." 28 U.S.C. § 2201(a). Disability Rights
7 Washington requests declaratory relief, along with a permanent injunction and any
8 other remedy the court finds necessary, to clarify the responsibility of Defendants
9 to abide by the provisions of the federal Protection and Advocacy Acts.

10 Defendants are unwilling to reconsider their position that they are not required to
11 follow the provisions of the Acts because they interpret disability, mental illness,
12 and emotional impairments quite narrowly and continue to disagree with the courts
13 previous Order stating that Penrith Farms' status as a private company has nothing
14 to do with whether the Protection and Advocacy Acts apply. Declaring the "rights
15 and legal relations" between Disability Rights Washington and Defendants will aid
16 Disability Rights Washington in fulfilling its federal mandate to provide protection
17 and advocacy services to people with disabilities and mental illness. *See id.*

18 A permanent injunction is also appropriate in the current situation. When, in
19 the Court's discretion, it finds there is "(1) the likelihood of substantial and
20 immediate irreparable injury, and (2) the inadequacy of remedies at law." It may

1 issue a permanent injunction. *G.C. and K.B. Invs., Inc. v. Stuart Wilson and Irene*
2 *Wilson*, 326 F.3d 1096, 1107 (9th Cir. 2003), citing *LaDuke v. Nelson*, 762 F.2d
3 1318, 1330 (9th Cir. 1985). Disability Rights Washington continues to suffer
4 irreparable harm to its privately enforceable rights as a Protection and Advocacy
5 system. *See Hawaii Disability Rights Center v. Cheung et al.*, 513 F. Supp.2d
6 1185, 1193-94 (D. HI 2007). Nothing short of full and meaningful access to
7 conduct its investigation and the opportunity to provide other protection and
8 advocacy services as mandated by the Protection and Advocacy Acts will remedy
9 the violation of Disability Rights Washington's rights. *See id.*

10 **IV. CONCLUSION**

11 This court has already ruled that in order to investigate, a threshold showing
12 of mental illness is not required, and that there is sufficient evidence to show that
13 Defendants may serve people with mental illness. Ct. Rec. 45 p. 4. Disability
14 Rights Washington has presented additional information further supporting the
15 presence of people with mental illness and disabilities at Penrith Farms. In
16 addition, it has presented evidence of possible abuse and neglect as evidenced by
17 interactions with residents as well as statement against interest provided by Penrith
18 Farms staff. Disability Rights Washington made repeated attempts to engage
19 Defendants in a discussion about how its residents with mental illness and
20 disabilities will be able to access the federally mandated protection and advocacy

1 services from Disability Rights Washington. Despite the Court's earlier order and
2 the additional facts discovered during Disability Rights Washington's visit to
3 Penrith Farms, Defendants continue to refuse to acknowledge the legitimacy of
4 Disability Rights Washington's claim that it is allowed access to provide federally
5 mandated protection and advocacy services to people with disabilities at Penrith
6 Farms.

7 For the reasons stated above, Plaintiff, Disability Rights Washington
8 respectfully requests this Court grant its Motion for Summary Judgment and
9 declare that as a matter of law the Protection and Advocacy Acts are applicable to
10 Penrith Farms, permanently enjoin Defendants to comply with Disability Rights
11 Washington's lawful requests for access to provide federally mandated Protection
12 and Advocacy services which include investigations of abuse and neglect,
13 monitoring of resident conditions, provision of information and referral services,
14 and other advocacy services as authorized by the Protection and Advocacy Acts,
15 and provide any other remedies the Court deems necessary.

16 Dated this 14th day of August, 2009.

17 Respectfully Submitted,

18 DISABILITY RIGHTS WASHINGTON

19 s/David Carlson

David R. Carlson, WSBA # 35767

Zachary Burr, WSBA #37556

Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of August, 2009, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following: Matthew Sanger (sanger@ssglaw.org).

s/Mona Rennie

Legal Assistant

Disability Rights Washington